

MAY 21 2003

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ROBERT CLAYTON WILHELM, SR.,

Defendant - Appellant.

No. 02-10175

D.C. No. CR-99-01405-1-RCC

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Raner C. Collins, District Judge, Presiding

Argued and Submitted March 14, 2003
San Francisco, California

Before: KOZINSKI, GRABER, and BERZON, Circuit Judges.

Defendant Robert Clayton Wilhelm, Sr., appeals from his conviction for violating 18 U.S.C. § 922(g)(9) by possessing firearms after having been convicted of a misdemeanor crime of domestic violence. We affirm.

1. The conviction does not violate the Ex Post Facto Clause because Defendant's illegal conduct, the possession of firearms, occurred about three years

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after 18 U.S.C. § 922(g)(9) took effect. See United States v. Hancock, 231 F.3d 557, 565 (9th Cir. 2000) (upholding same statute against due process challenges); United States v. Arzate-Nunez, 18 F.3d 730, 733 (9th Cir. 1994) (requiring a defendant to show that the law "applies to events occurring before its enactment").

2. Arizona Revised Statute § 13-1203(A)(1) makes it illegal to commit assault by "[i]ntentionally, knowingly or recklessly causing any physical injury to another person." When the victim of a section 13-1203(A)(1) assault is an ex-spouse, Arizona Revised Statute § 13-3601 defines the violation as a crime of "domestic violence."

We have already held that "the use of physical force is a required element of [Arizona Revised Statute] § 13-1203(A)(1)." United States v. Ceron-Sanchez, 222 F.3d 1169, 1172-73 (9th Cir. 2000). And Defendant's conviction under Arizona Revised Statute § 13-3601 proves that the violence—the use of force—was domestic in nature. Defendant's prior crime was therefore a misdemeanor crime of domestic violence within the meaning of 18 U.S.C. § 921(a)(33)(A)(ii) (defining a "misdemeanor crime of domestic violence" as an offense that "has, as an element, the use or attempted use of physical force . . . committed by a former spouse . . . of the victim").

AFFIRMED.